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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,842	11/24/2003	Frank N. Kinney	3516	2929

7590 11/05/2004

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EXAMINER

OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/719,842

Applicant(s)

KINNEY, FRANK N.

Examiner

Esther O. Okezie

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*NY*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 and 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1 the term "registerably" is indefinite and confusing. It is suggested that the word simply be deleted from the claim to avoid confusion. A support element affixed to a shaft would necessitate registerable or corresponding connection in order to conform properly.

Regarding claim 8 whether the action of the fulcrum is dependent upon the closure of the jaw is unclear. Furthermore, the phrase "becomes a fulcrum" is indefinite and would seemingly describe a method of using the weed extractor. A possible correction could be "...wherein said activation arm functions as a fulcrum for said handle shaft when said jaw is in a closed position.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1,4,5,7,8,9, and10 rejected under 35 U.S.C. 102(b) as being anticipated by Camp.

4. Regarding claim 1 Camp discloses a weed extractor having an elongated handle (22), shaft (12), and a weed engagement portion comprising, a jaw support element (14) affixed or in corresponding alignment to the shaft at its distal end (column 2, lines 4-6), a movable jaw assembly pivotally secured to said jaw support element inwardly of its free end (stationary jaw 26 and pivot jaw lever 32; column 2, lines 18-27), resilient means being coil spring 42 extending from hole 45 on pivot jaw lever 32 to jaw support 14 in pin 44 (column 2, lines 39-49), an activation arm (46) pivotally secured to and extending from said shaft by pivot shown in figures one and two near arm (46) in spaced relation to said jaw support element (14), a connection rod including a spring (48), cable (50), and chain (52) extending from pivot jaw lever 32 to said activation arm (column 2, lines 45-50).

5. Regarding claim 4 Camp discloses a weed extractor set forth in claim 1 wherein said movable jaw assembly comprises a jaw portion and a lever portion. The jaw portion being pivotal jaw member (36) and lever portion being the back end of pivotal jaw lever (32) (column 2, lines 22-26).

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6. Regarding claim 5 Camp discloses a weed extractor set forth in claim 1 wherein said activation arm (46) is angularly disposed from said shaft (12) (see figures 1 and 2).

7. Regarding claim 7 Camp discloses a weed extractor set forth in claim 1 wherein said jaw assembly (stationary jaw 26 and pivot jaw lever 32; column 2, lines 18-27) has an open position and a closed position in response to movement of said activation arm (column 2, lines 60-65).

8. Regarding claim 8 Camp discloses a weed extractor set forth in claims 1 and 7 wherein said activation arm (32) functions as a fulcrum for said handle shaft (12 and 22) when said jaw (26 and 32) is in a closed position (column 2 lines 54-68; column 3 lines 1-5).

9. Regarding claim 9 Camp discloses a weed extractor set forth in claim 1 wherein said resilient means extending from said jaw assembly (stationary jaw 26 and pivot jaw lever 32; column 2, lines 18-27) to said jaw support (14) comprises a coil spring (42) (column 2, lines 39-45).

10. Regarding claim 10 Camp discloses a weed extractor set forth in claim 1 wherein said handle shaft is telescopically adjustable along its longitudinal axis (column 1, lines 40-45; column 2, lines 1-10; column 4, lines 33-38).

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11. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez.

12. Regarding claim 1 Rodriguez discloses a weed extractor having an elongated handle (30), shaft (12) and a weed engagement portion comprising, a jaw support element comprising: angular frame (10) , vertical plate (46), hinge barrel (22) connected to back plate (48), the jaw support element correspondingly affixed or in corresponding alignment to the shaft at its distal end (column 2, lines 13-17), a movable jaw assembly (hook plate 18 and pivot plate 20) pivotally secured by pivot bolt 40 to said jaw support element inwardly of its free end, resilient means being coil spring (50) extending from vertical plate (46) of jaw support element to pivot jaw (20) through hole (29), an activation arm (32) pivotally secured to and extending from said shaft by pivot shown in figure one near arm (32) in spaced relation to said jaw support element, a connection rod being cable 44 extending from hole (49) in pivot jaw (20) to said activation arm ( 32) pulled through cable assembly (42) ( column 2, lines 40-55).

13. Regarding claim 3 Rodriguez discloses a weed extractor set forth in claim 1 wherein said jaw support is angularly disposed from said handle shaft (see frame 10 including angular base plate (14) (column 2, lines 66-68; column 3, lines 1-11).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camp in view of Hoffman.

15. Regarding both claims 2 and 11 Camp meets the limitations of claim 1 but does not disclose a handle shaft having a longitudinally offset parallel handgrip portion as stated in claim 2 or a handle portion having a parallel angular offset grip engagement portion as stated in claim 11. Hoffman teaches a handle attachment "for diverse long handled implements such as shovels, lifting tools and the like..." (column 1, lines 11-13), "Wherein the handle unit (11) of the assembly (10) is provided with a pair of offset and generally parallel hand grip portions (14) and an elongated shaft member (16) attached to the lower hand grip portions (14) and disposed at any angle of approximately 45 degrees thereto; wherein the handle unit (11) and its associated implement head unit (12) are vertically adjustable relative to one another" (see abstract). It would be obvious to any one of ordinary skill in the art to take the handle attachment of Hoffman for any long handled lifting tool and apply it to the distal end of Camp in order to increase leverage of the user by more evenly distributing the force employed and "allow the users hands to assume an ideal position to impart maximum

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power ..." as taught by Hoffman (see column 1, lines 20-65 for detailed description of the advantages of offset handle).

***Allowable Subject Matter***

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US-6698526, US-6691793 B2, US-5782518, US-779984, US-4856759, US-5743340, US-3222699, US-5232256.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (703) 305-0433. The examiner can normally be reached on Mon-Fri 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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